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March 29, 2012

**BY ECF and BY FIRST CLASS MAIL**

Honorable Kiyo A. Matsumoto  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: United States v. Kissone Frederick,  
09 Cr 258 (KAM))

Dear Judge Matsumoto:

This letter is in response to the Court's Order dated March 23, 2012 in which the Court directs defendant to show cause why his failure to file his Rule 33 motion within 14 days after the jury verdict amounts to excusable neglect pursuant to Fed.R.Crim.P. 45(B)(1)(b).

The verdict in this matter was rendered on December 10, 2009. Trial counsel for defendant Frederick was Ephraim Savitt, Esq. After the verdict, Mr Savitt continued as counsel for Mr Frederick. On January 13, 2010 Mr Savitt filed a Rule 29 © motion of behalf of Mr Frederick and continued to represent him on both the Rule 29 © motion and a motion to set aside the verdict with respect to Count Three. These motions were denied on June 14, 2010.

While still awaiting the Pre-Sentence Report, Kissone Frederick requested new counsel by letter dated July 4, 2010. On July 14, 2010, new counsel, Dawn Cardi, Esq. was assigned and the pre-sentence investigation was ordered held in abeyance until Ms Cardi had an opportunity to confer with Mr Frederick and become familiar with the facts of this case. One week later, Ms Cardi was terminated as assigned counsel for Mr Frederick because of conflict issues and present counsel was assigned.

Defendant did not file his Rule 33 motion within 14 days of the jury verdict for the following reasons:

- during this 14- day time period, he was still represented by Mr Savitt, the allegedly ineffective counsel;
- during this time period, he continued to believe that was still facing 18 ½ to 20 years as per his understanding before he went to trial. See Defendant's Affidavit which is attached as Exhibit A of the Attorney's Affidavit in support of the Defendant's Rule 33 motion;

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- he did not become aware that he was deemed an armed career offender with its attendant guideline consequences, until after he received a copy of his Pre-Sentence Report which was disclosed on February 7, 2011.
- he did not become aware that he faced a mandatory 25-year consecutive sentence on the two 924 © charges until after his trial counsel, Mr Savitt, was relieved.

For the reasons set forth above, it is respectfully submitted that Mr Frederick's failure to file a Rule 33 motion within 14 days of the jury's verdict should be deemed excusable neglect.

Respectfully submitted,

Joyce C. London

cc.: AUSA Carter Burwell (By ECF and By Email)

Very truly yours,

*Joyce C. London*  
Joyce C. London

cc.: AUSA Carter Burwell (By ECF)